

CHAPTER NO. 749

HOUSE BILL NO. 2063

By Representative Hensley

Substituted for: Senate Bill No. 1892

By Senator Jackson

AN ACT to amend Tennessee Code Annotated, Section 7-82-307, relative to filling of vacancies of board of commissioners of a water utility district having less than one thousand six hundred (1,600) subscribers located in any county having a population of not less than thirty-nine thousand nine hundred (39,900) nor more than forty thousand (40,000), according to the 2000 federal census or any subsequent federal census.

WHEREAS, utility districts play a crucial role in the effective, efficient and systematic distribution of water, gas, electric and other critically essential utility services required by many citizens and business enterprises across the state of Tennessee; and

WHEREAS, utility districts are created, and exist, for the sole purpose of serving the vital needs of, promoting the best interests of, and otherwise benefiting and improving the quality of life for Tennessee citizens and business enterprises, many of whom are completely and totally dependent upon utility districts for the provision of essential utility services; and

WHEREAS, utility districts function within a fiduciary realm and, therefore, should and must operate in accordance with the highest standards of professionalism, competency, accountability and trust; now therefore,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 7-82-307, is amended by adding the following language as a new, appropriately designated subsection:

(f)

(1) Notwithstanding the provisions of this section or any other law to the contrary, any water utility district having less than one thousand six hundred (1,600) customers in any county having a population of not less than thirty-nine thousand nine hundred (39,900) nor more than forty thousand (40,000), according to the 2000 federal census or any subsequent federal census, shall be governed by a five-member board of utility district commissioners. No person shall be eligible for appointment as utility district commissioner unless he or she is a customer of the utility district and resides within the service area of the utility district. As used in this subsection, "customer" means a person who is regularly billed for utility service rendered by the district and who pays money for such service.

(2) The regular term of office of each utility district commissioner shall be four (4) years. In order to establish staggered terms on the board, the three (3) incumbent commissioners serving on the effective date of this act shall each serve an initial term of four (4) years, commencing on the effective date of this act. Thereafter, those three (3) offices shall be subject to appointment every four (4) years in

accordance with the requirements and procedures set forth in this subsection. The initial term of office of each of the two (2) commissioners added by the provisions of this act shall be two (2) years, commencing on the effective date of this act, to be filled in accordance with the requirements and procedures set forth in this subsection. Thereafter, those two (2) offices shall be subject to appointment every four (4) years in accordance with the requirements and procedures set forth in this subsection. All unscheduled vacancies arising after the effective date of this act shall be filled, for the remainder of the unexpired term, in accordance with the requirements and procedures set forth in this subsection.

(3) Within fourteen (14) days after the occurrence of any vacancy in the office of any utility district commissioner caused by death, resignation, disability, or forfeiture of office, and no later than sixty (60) days prior to the expiration of the term of office of any incumbent utility district commissioner, the board of utility district commissioners or its remaining members shall select three (3) qualified nominees to fill such office for the remainder of the term or for the full term, as the case may be, and, under the seal of the board of commissioners, shall certify such list of nominees in order of preference recommended by such commissioners, to the county mayor. Within fourteen (14) days after issuance of certification by the board of commissioners to the county mayor, the county mayor shall enter an order either appointing one of the nominees or rejecting the entire list. If this or any subsequent list of nominees is not timely submitted to the county mayor, then the county mayor shall proceed to appoint a qualified person to serve on the board of utility commissioners. Any order either making an appointment or rejecting the entire list of nominees shall be entered of record on the minutes of the county legislative body, and a certified copy thereof shall be furnished to the board of utility district commissioners. However, if the entire list of nominees is rejected by the county mayor, then the board of commissioners shall select a second list consisting of three (3) other, qualified nominees to fill such office and, under the seal of the board of commissioners, shall certify such second list of other nominees in order of preference recommended by such commissioners, to the county mayor within fourteen (14) days following entry of the order rejecting the first list of nominees. Within fourteen (14) days after the second issuance of certification by the board of utility district commissioners to the county mayor, the county mayor shall enter an order either appointing one of the nominees or rejecting the entire second list. Any order either making an appointment or rejecting the entire list of nominees shall be entered of record on the minutes of the county legislative body, and a certified copy thereof shall be furnished to the board of utility district commissioners. However, if the entire second list of nominees is rejected by the county mayor, then, within fourteen (14) days following entry of such order, the county mayor shall request the board of commissioners or its remaining members to submit the third and final list consisting of three (3) other, qualified nominees to fill such office or, alternatively, the county mayor shall request the county legislative body to submit the third and final list consisting of three (3) other, qualified nominees to fill such office; provided further, however, prior to requesting a list of nominees from the county legislative body, the county mayor must file a written statement with the county legislative body setting forth the mayor's specific reasons for rejecting each of the six (6) nominees previously selected by the utility district board of

commissioners or its remaining members. Such written statement shall constitute a public record and shall be available for public inspection. Within fourteen (14) days following such request, the board of utility district commissioners or the county legislative body shall select the final list consisting of three (3) other, qualified nominees to fill such office and shall certify such list of additional nominees in order of preference recommended to the county mayor. Within fourteen (14) days following such certification, the county mayor shall enter an order either appointing one of the nominees or rejecting the entire final list. Any order either making an appointment or rejecting the entire list of nominees shall be entered of record on the minutes of the county legislative body, and a certified copy thereof shall be furnished to the board of utility district commissioners. If the county mayor rejects the entire final list, then the vacant, or to be vacated, office of utility district commissioner shall be filled in accordance with the following election procedures:

(A) An election shall be conducted at the first regular meeting of the board of commissioners occurring more than thirty-five (35) days after entry of the order of county mayor rejecting the entire final list of nominees for such office. The board of utility district commissioners shall schedule such meeting at seven o'clock p.m. (7:00 p.m.).

(B) The incumbent commissioners shall give notice to all customers of the vacated, or soon to be vacant, office by mail and by publication in a local newspaper of general circulation. This notice shall state that such vacancy exists or will exist, shall state the qualifications for holding such office, shall indicate the date and time for the election to fill the vacancy, shall indicate the deadline for nominating petitions to be filed, and shall state that persons desiring to be placed on the ballot must submit a nominating petition signed by not less than ten (10) adults who are customers of the district and who also reside in the district. This notice shall be mailed to all customers of the district at least thirty (30) days prior to the election. Immediately after the qualifying deadline, the remaining commissioners shall prepare a paper ballot of the nominees for the vacancy, which ballot shall be published in a local newspaper of general circulation not less than five (5) nor more than fourteen (14) days prior to the date of the election. The vacancy shall be filled by a plurality of the votes cast for the vacant position on the board. Write-in votes shall also be counted.

(4) In implementing the provisions of this subsection, the nominating and appointing authorities shall give due consideration to the need for racial, gender, age and ethnic minority diversity on the utility district board of commissioners.

(5) Subject to the availability and sufficiency of existing staffing and budgetary resources, on or before June 30, 2005, the comptroller of the treasury shall audit the records, financial transactions and purchasing practices of the utility district for fiscal year 2003-2004. The audit, and its findings and recommendations, shall constitute a public record and shall be available for public inspection. The provisions of this subdivision shall, in no way, be construed or implemented in any manner to require increased funding for the office of the comptroller of the treasury.

SECTION 2. This act shall take effect upon becoming a law, the public welfare requiring it.

PASSED: May 5, 2004


JIMMY RAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES


JOHN S. WILDER
SPEAKER OF THE SENATE

APPROVED this 24th day of May 2004


PHIL BREDESEN, GOVERNOR